STATE OF NEW YORK

1876

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. L. ROSENTHAL, LAVINE, THIELE, SANTABARBARA, STECK -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to requiring certain health insurance coverage for lymphedema

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Clauses (i) and (ii) of subparagraph (A) of paragraph 20 of subsection (i) of section 3216 of the insurance law, as amended by chapter 571 of the laws of 2022, are amended and a new clause (iii) is added to read as follows:

(i) all stages of reconstruction of the breast or chest wall on which the mastectomy or partial mastectomy has been performed; [~~and~~]

(ii) surgery and reconstruction of the other breast or chest wall to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate. Chest wall reconstruction surgery shall include aesthetic flat closure as such term is defined by the National Cancer Institute. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. Written notice of the availability of such coverage shall be delivered to the policyholder prior to inception of such policy and annually thereafter[~~.~~]**; and**

(iii) prostheses and physical complications of all stages of mastectomy, including lymphedema;

§ 2. Subsection (i) of section 3216 of the insurance law is amended by adding two new paragraphs 39 and 40 to read as follows:

(39) Every policy which provides hospital, surgical, medical or major medical coverage shall provide coverage for the differential diagnosis and treatment of lymphedema, both primary and secondary lymphedema.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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Such coverage shall include, in addition to benefits for a course of manual lymph drainage whose frequency and duration is determined by the treating physician or therapist based on medical necessity and not based on physical therapy and rehabilitation standards, benefits for equipment, supplies, devices, complex decongestive therapy, and out-patient self-management training and education for the treatment of lymphedema, if prescribed by a health care professional legally authorized to prescribe or provide such items under title eight of the education law. Lymphedema therapy administered under this section shall be administered only by a therapist certified to perform lymphedema treatment by the Lymphology Association of North America (LANA) or certified in accordance with standards equivalent to the certification standards of LANA. Such equipment, supplies or devices shall include, but not be limited to, bandages, compression garments, pads, orthotic shoes and devices, with replacements when required to maintain compressive function or to accommodate changes in the patient's dimensions. Coverage shall be provided for follow-up treatments when medically required or to periodically validate home techniques, to monitor progress against the written treatment plan and to modify the treatment plan as required. No individual, other than a licensed physician or surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(A) A policy which is a managed health care product may require such health care professional be a member of such managed health care plan's provider network, provided that such network includes sufficient health care professionals who are qualified by specific education, experience and credentials to provide the covered benefits described in this paragraph.

(B) No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits pursuant to this paragraph any copayment, fee, policy year or calendar year, or durational benefit limitation or maximum for benefits or services that is not equally imposed upon all individuals in the same benefit category.

(C) This paragraph shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

(D) For purposes of this paragraph, a "managed care product" shall mean a policy which requires that medical or other health care services covered under the policy, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network. In addition, a managed care product shall also mean the in-network portion of a contract which requires that medical or other health care services covered under the contract, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network, in order for the insured to be entitled to the maximum reimbursement under the contract.

(40) Patients undergoing any surgery or radiotherapy procedure shall be provided information on the risk of lymphedema associated with that

procedure, and the potential post-procedure symptoms of lymphedema. Informed consent agreements for all surgeries and radiation therapies shall include information on the risk of lymphedema associated with the alternative procedures.

§ 3. Clauses (i) and (ii) of subparagraph (A) of paragraph 10 of subsection (k) of section 3221 of the insurance law, as amended by chapter 571 of the laws of 2022, are amended and a new clause (iii) is added to read as follows:

(i) all stages of reconstruction of the breast or chest wall on which the mastectomy or partial mastectomy has been performed; [~~and~~]

(ii) surgery and reconstruction of the other breast or chest wall to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate. Chest wall reconstruction surgery shall include aesthetic flat closure as such term is defined by the National Cancer Institute. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. Written notice of the availability of such coverage shall be delivered to the policyholder prior to inception of such policy and annually thereafter[~~.~~]**; and**

(iii) prostheses and physical complications of all stages of mastectomy, including lymphedema;

§ 4. Subsection (k) of section 3221 of the insurance law is amended by adding two new paragraphs 23 and 24 to read as follows:

(23) Every group policy issued or issued for delivery in this state which provides hospital, surgical, medical or major medical coverage shall provide coverage for the differential diagnosis and treatment of lymphedema, both primary and secondary lymphedema. Such coverage shall include, in addition to benefits for a course of manual lymph drainage whose frequency and duration is determined by the treating physician or therapist based on medical necessity and not based on physical therapy and rehabilitation standards, benefits for equipment, supplies, devices, complex decongestive therapy, and out-patient self-management training and education for the treatment of lymphedema, if prescribed by a health care professional legally authorized to prescribe or provide such items under title eight of the education law. Lymphedema therapy administered under this section shall be administered only by a therapist certified to perform lymphedema treatment by the Lymphology Association of North America (LANA) or certified in accordance with standards equivalent to the certification standards of LANA. Such equipment, supplies or devices shall include, but not be limited to, bandages, compression garments, pads, orthotic shoes and devices, with replacements when required to maintain compressive function or to accommodate changes in the patient's dimensions. Coverage shall be provided for follow-up treatments when medically required or to periodically validate home techniques, to monitor progress against the written treatment plan and to modify the treatment plan as required. No individual, other than a licensed physician or surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(A) A policy which is a managed health care product may require such health care professional be a member of such managed health care plan's provider network, provided that such network includes sufficient health care professionals who are qualified by specific education, experience

and credentials to provide the covered benefits described in this paragraph.

(B) No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits pursuant to this paragraph any copayment, fee, policy year or calendar year, or durational benefit limitation or maximum for benefits or services that is not equally imposed upon all individuals in the same benefit category.

(C) This paragraph shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

(D) For purposes of this paragraph, a "managed care product" shall mean a policy which requires that medical or other health care services covered under the policy, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network. In addition, a managed care product shall also mean the in-network portion of a contract which requires that medical or other health care services covered under the contract, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network, in order for the insured to be entitled to the maximum reimbursement under the contract.

(24) Patients undergoing any surgery or radiotherapy procedure shall be provided information on the risk of lymphedema associated with that procedure, and the potential post-procedure symptoms of lymphedema. Informed consent agreements for all surgeries and radiation therapies shall include information on the risk of lymphedema associated with the alternative procedures.

§ 5. Subparagraphs (A) and (B) of paragraph 1 of subsection (x) of section 4303 of the insurance law, as amended by chapter 571 of the laws of 2022, are amended and a new subparagraph (C) is added to read as follows:

(A) all stages of reconstruction of the breast or chest wall on which the mastectomy or partial mastectomy has been performed; [~~and~~]

(B) surgery and reconstruction of the other breast or chest wall to produce a symmetrical appearance; and

(C) prostheses and physical complications of all stages of mastectomy, including lymphedema;

in the manner determined by the attending physician and the patient to be appropriate. Chest wall reconstruction surgery shall include aesthetic flat closure as such term is defined by the National Cancer institute. Such coverage may be subject to annual deductibles or coinsurance provisions as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. Written notice of the availability of such coverage shall be delivered to the group remitting agent or group contract holder prior to the inception of such contract and annually thereafter.

§ 6. Section 4303 of the insurance law is amended by adding two new subsections (uu) and (vv) to read as follows:

(uu) Every contract issued by a hospital service corporation or health service corporation which provides hospital, surgical, medical or major

medical coverage shall provide coverage for the differential diagnosis and treatment of lymphedema, both primary and secondary lymphedema. Such coverage shall include, in addition to benefits for a course of manual lymph drainage whose frequency and duration is determined by the treating physician or therapist based on medical necessity and not based on physical therapy and rehabilitation standards, benefits for equipment, supplies, devices, complex decongestive therapy, and out-patient self-management training and education for the treatment of lymphedema, if prescribed by a health care professional legally authorized to prescribe or provide such items under title eight of the education law. Lymphedema therapy administered under this section shall be administered only by a therapist certified to perform lymphedema treatment by the Lymphology Association of North America (LANA) or certified in accordance with standards equivalent to the certification standards of LANA. Such equipment, supplies or devices shall include, but not be limited to, bandages, compression garments, pads, orthotic shoes and devices, with replacements when required to maintain compressive function or to accommodate changes in the patient's dimensions. Coverage shall be provided for follow-up treatments when medically required or to periodically validate home techniques, to monitor progress against the written treatment plan and to modify the treatment plan as required. No individual, other than a licensed physician or surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(1) A policy which is a managed health care product may require such health care professional be a member of such managed health care plan's provider network, provided that such network includes sufficient health care professionals who are qualified by specific education, experience and credentials to provide the covered benefits described in this subsection.

(2) No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits pursuant to this subsection any copayment, fee, policy year or calendar year, or durational benefit limitation or maximum for benefits or services that is not equally imposed upon all individuals in the same benefit category.

(3) This subsection shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

(4) For purposes of this subsection, a "managed care product" shall mean a policy which requires that medical or other health care services covered under the policy, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network. In addition, a managed care product shall also mean the in-network portion of a contract which requires that medical or other health care services covered under the contract, other than emergency care services, be provided by, or pursuant to a referral from a primary care provider, and that services provided pursuant to such a referral be rendered by a health care provider participating in the insurer's managed care provider network, in order for the insured to be entitled to the maximum reimbursement under the contract.

(vv) Patients undergoing any surgery or radiotherapy procedure shall be provided information on the risk of lymphedema associated with that procedure, and the potential post-procedure symptoms of lymphedema. Informed consent agreements for all surgeries and radiation therapies shall include information on the risk of lymphedema associated with the alternative procedures.

§ 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all insurance policies, contracts and plans issued, renewed, modified, altered or amended on or after such effective date.